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From: Michaud, John
Sent: Thur 1/23/2014 9:09:30 PM
Subject: FW: WV communications materials

FYI internal communication materials from OCIR.

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From: Levine, Carolyn
Sent: Thursday, January 23, 2014 3:40 PM
To: Michaud, John
Subject: WV communications materials

Hi John,

Our latest statements are as follows, see section on authorities.

Regulatory issues: EPA continues to work closely with other Federal and State agencies in West Virginia as they begin implementing a plan for getting the water system back on-line. As those efforts are already underway, EPA is also examining state and federal response authorities associated with the incident to determine next steps and the environmental laws and regulations applicable to the facility. This review will help inform EPA's activities going forward.

EPA role in the response: EPA continues to work closely with other Federal and State agencies in West Virginia as they begin implementing a plan for getting the water system back on-line. The State of West Virginia and the West Virginia American Water Company (WVAWC) are developing a plan for flushing the system, along with sampling and analysis, that will allow residents to begin using their water as soon as possible. State and Federal (ATSDR/CDC) health officials have agreed that a level of 1 part per million (ppm) of methylcyclohexanemethanol is protective of public health and the State/WVAWC will use the flushing process to assure that the 1 ppm level is achieved throughout the system. The EPA supports this approach and has offered sampling and monitoring assistance to the State during the restart efforts.

TSCA: 4-methylcyclohexane was one of more than 60,000 chemicals in commerce when the Toxic Substances Control Act (TSCA) was passed in 1976. The 1976 statute “grandfathered” in existing chemicals, and provided EPA with very limited ability to require testing on those existing chemicals to determine if they are safe. EPA continues to support much needed legislative reform to ensure that the Agency has updated authority to more effectively assess and regulate potentially harmful chemicals.

PPH: Early January 21, during an operations meeting at the facility, Freedom Chemical informed the State of West Virginia, the West Virginia American Water Company, and EPA that another chemical was part of the release that occurred on January 9, 2014. This chemical has been identified as a proprietary mixture of polyglycol ethers (PPH). It was in the same tank and entered the water system at the same time as the MCHM. PPH represented a relatively small percentage (approximately 5%) of the total volume in the tank. EPA shared this information with the Chemical Safety Board and the Agency for Toxic Substances and Disease Registry (ATSDR).

The Agency for Toxic Substances and Disease Registry (ATSDR) provided the following information regarding the newly identified chemical: Toxicologic information on PPH is limited. Based on the Material Safety Data Sheets (MSDS) provided by the manufacturer, the reported toxicity of this material appears to be lower than the toxicity of MCHM (LD50 > 2000 mg/kg for the primary component of PPH vs. 825 mg/kg for MCHM). Given the small percentage of PPH in the tank and information suggesting similar water solubility as MCHM, it is likely that any amount of PPH currently in the water system would be extremely low. However, the water system has not been tested for this material.

EPA will continue to support work with the State, the WVAMC and its federal partners to address this new development and continues to be available for sampling and monitoring assistance.

What EPA Has Done

EPA worked closely with other Federal and State agencies in West Virginia as they implemented a plan for getting the water system back on-line. The Agency also provided two on-scene coordinators to help with the local response and provided technical assistance on to the State of West Virginia and the West Virginia American Water Company (WVAWC) on a plan for flushing the system, along with sampling and analysis to allow residents to begin using their water as soon as possible. State and Federal (ATSDR/CDC) health officials have agreed that a level of 1 part per million (ppm) of methylcyclohexanemethanol is protective of public health and the State/WVAWC will use the flushing process to assure that the 1 ppm level is achieved throughout the system. The EPA supports this approach and has also offered sampling and monitoring assistance to the State during the restart efforts.

EPA Authorities

Depending on the nature of the spill, EPA has statutory response authorities under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Oil Pollution Act (OPA). EPA provides support when requested or when state and local first responder capabilities have been exceeded. In carrying out these responsibilities, EPA coordinates with other EPA programs, other federal agencies, states, tribes, and local governments.

At the Freedom Industries response, the WV Department of Environmental Protection is the lead agency responsible for overseeing the response activities and the EPA has offered support and continues to work closely with other federal and state agencies in West Virginia as they begin implementing a plan for getting the water system back on-line. As those efforts are already underway, EPA is also examining state and federal response authorities such as CERCLA (since the product released is not an Oil) associated with the incident to determine next steps and the environmental laws and regulations applicable to the facility. This review will help inform EPA's activities going forward.

With respect to prevention and preparedness in advance of a spill or release, EPA also has statutory regulatory authority for oil storage facilities under the Clean Water Act (Spill Prevention, Control, and Countermeasure Program – SPCC, which pertains to oil spills but currently does not cover spills of hazardous substances) and for chemicals under the Clean Air Act (Risk Management Program – RMP – to address methods to minimize and respond to releases).

The Freedom Industries facility in West Virginia is not regulated under the EPA's RMP since it is not on the list of hazardous substances and the SPCC does not apply to the tanks that released MCHM since that is not an oil. Also, the facility does not fall under EPA's Resource Conservation and Recovery Act (RCRA) program because the material leaked is a "product" and not a "solid waste" or hazardous waste that would require a permit and storage and management requirements, as defined under RCRA Subtitle C. However, from a response perspective, RCRA is being examined for applicability.

Under the Emergency Planning and Community Right-to-Know Act (EPCRA), state and local responders are to be provided hazardous information from the facility owners or operators. The state and local responders can then use this information to minimize risk and develop response plans.

EPA'S Involvement in Identification of the New Chemical

Early January 21, during an operations meeting at the facility, Freedom Industries informed the State of West Virginia, the West Virginia American Water Company, and EPA that another chemical was part of the release that occurred on January 9, 2014. This chemical has been identified as a proprietary mixture of polyglycol ethers (PPH). It was in the same tank and entered the water system at the same time as the MCHM. PPH represented a relatively small percentage (approximately 7.3%) of the total volume in the tank. EPA shared this information with the Chemical Safety Board and the Agency for Toxic Substances and Disease Registry (ATSDR).

The Agency for Toxic Substances and Disease Registry (ATSDR) provided the following information regarding the newly identified chemical: Toxicologic information on PPH is limited. Based on the Material Safety Data Sheets (MSDS) provided by the manufacturer, the reported toxicity of this material appears to be lower than the toxicity of MCHM (LD50 > 2000 mg/kg for the primary component of PPH vs. 825 mg/kg for MCHM). Given the small percentage of PPH in the tank and information suggesting similar water solubility as MCHM, it is likely that any amount of PPH currently in the water system would be extremely low.

EPA will continue to support work with the State, the WVAMC and its federal partners to address this new development and continues to be available for sampling and monitoring assistance.

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